

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 36

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TAKAHISA HARA,
MASAHITO MATSUMOTO,
and
HITOSHI NAKADA

Appeal No. 1997-3249
Application No. 08/267,768

ON BRIEF

Before WARREN, LIEBERMAN, and PAWLIKOWSKI, Administrative Patent Judges.
LIEBERMAN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 from the decision of the examiner refusing to allow claims 2, 3, 8, and 9, which are all the claims pending in this application.

THE INVENTION

The invention is directed to a multilayer molded article having a composite skin layer laminated to a thermoplastic resin core. The composite skin layer comprises a foam sheet and a skin material which satisfy the equation $20/(E \times t) + F \leq 2.5$ wherein E is a tensile modulus not greater than 950 Kg/cm², t is the thickness of the skin material in cm, and F is a heat shrinkage factor expressed in %.

THE CLAIM

Claim 2 is illustrative of appellants' invention and is reproduced below:

2. A multilayer molded article comprising:
a thermoplastic resin layer; and

a composite skin layer, disposed on said thermoplastic resin layer, having a skin material and a foam sheet, characterized in that a tensile modulus E of said skin material of the composite skin layer is not larger than 950 kg/cm², and a tensile modulus E (kg/cm²), a heat shrinkage factor F (%) and a thickness t (cm) of said skin material which satisfy the following relationship:
 $20/(E \times t) + F \leq 2.5$; and
laminating said preformed composite skin layer on a core layer of thermoplastic resin for producing the multilayered molded article.

THE REFERENCE OF RECORD

As evidence of obviousness, the examiner relies upon the following reference:

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Kamimura et al. (Kamimura)

4,769,278

Sep. 6, 1988

THE REJECTIONS

Claims 2, 3, 8, and 9 stand rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Kamimura.

OPINION

We have carefully considered all of the arguments advanced by appellants and the examiner, and agree with the examiner's decision. The rejections of claims 2, 3, 8, and 9 are not well founded. Accordingly, we reverse.

"[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability," whether on the grounds of anticipation or obviousness. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). On the record before us, there are two rejections dependent upon a single reference to Kamimura.

Kamimura discloses a multilayered member which may be applied to an automotive interior member such as a padded instrument panel. See column 1, lines 8-13 and compare with claim 3. In a more general aspect, we find that Kamimura is directed to a resilient multilayered member comprising a surface skin layer made into a gel on its outside side. See column 4, lines 20-24. Attached to the inside of the surface skin layer is a foamed PVC resin. See column 4, lines 22-23. Adjacent to that foamed resin is a cushion layer. The only cushioned layer specifically disclosed is a urethane foam layer. See column 4, lines 23-36.

In contrast, the claimed subject matter requires a multilayer molded article having a composite skin layer comprising a skin material and a foam sheet laminated on a core layer of a thermoplastic resin. In order for Kamimura to meet the requirements of the claimed subject matter, the cushion layer disclosed by Kamimura would necessarily have to be a core layer of a thermoplastic resin. The examiner, however, has made no finding of fact that this cushion layer is a thermoplastic layer as required by the claimed subject matter. Nor do we find any basis for finding polyurethane foam to be a thermoplastic resin. Accordingly, the examiner has established neither anticipation of, nor a *prima facie* case of obviousness of the claimed subject matter.

"Where the legal conclusion is not supported by [the] facts it cannot stand." In re Warner, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967).

The decision of the examiner is reversed.

The rejection of claims 2, 3, 8 and 9 under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103 as obvious over Kamimura is reversed.

PL:hh

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